

HOUSE BILL NO. 492

INTRODUCED BY MORGAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE ABANDONMENT OF A PORTION OF THE RIGHT-OF-WAY OR FOR ABANDONMENT OF HIGHWAY PROPERTY WHEN THE CONTIGUOUS PROPERTY HAS BEEN SUBDIVIDED PRIOR TO ABANDONMENT AND WHEN IT IS DETERMINED TO NOT BE NECESSARY TO THE LAYING OUT, ALTERING, CONSTRUCTION, IMPROVEMENT, OR MAINTENANCE OF A ROAD OR HIGHWAY; PROVIDING CRITERIA AND PROCEDURES FOR THE ABANDONMENT; AMENDING SECTIONS 60-2-107, 60-4-201, 60-4-202, 60-4-203, AND 60-4-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Purpose. The purpose of [sections 1 through 6] is to provide for the abandonment of an interest in real property that the department has determined is not necessary to the laying out, altering, construction, improvement, or maintenance of a road or highway. The current abandonment statute, 60-4-209, does not provide for abandonment of only a portion of the right-of-way or for abandonment of highway property where the contiguous property has been subdivided prior to abandonment.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) "Abandoned interest" means the fee simple or lesser interest in the subject property after the abandonment has been ordered by the commission.

(2) "Abandonment" means cessation of use of right-of-way or activity on the right-of-way with no intention to reclaim or use the right-of-way again.

(3) "Contiguous property" means subdivided parcels along ~~both sides~~ ONE SIDE of the length of the remainder.

(4) "Remainder" means the area lying between the centerline and the new right-of-way line as determined by the department, in its sole discretion, as necessary for the reconstruction and maintenance of a road or highway.

(5) "Subject property" means that portion of highway right-of-way for which abandonment is sought.

NEW SECTION. Section 3. Application of other laws. (1) The provisions of 60-2-107(1) through (3), 60-4-201, 60-4-202, 60-4-203, and 60-4-209(1) and (3) through (5) do not apply to abandonment under [sections 1 through 6].

(2) The provisions of 60-2-107(4) and (5) apply to abandonment under [sections 1 through 6] to the extent that reasonable access must remain after the abandonment.

NEW SECTION. Section 4. Procedure for abandonment. (1) Upon receipt of a petition, in writing, for the abandonment of the subject property from three or more owners of contiguous property, the department shall prepare an exhibit, setting forth the boundaries of the subject property and identifying the remainder.

(2) The department shall prepare an order of abandonment to propose to the commission.

(3) The proposed order must state that the subject property is subject to all easements and utilities apparent or of record.

(4) Before abandoning the subject property, the commission shall notify the board of county commissioners in writing of its intent to abandon the subject property and shall hold a public hearing in the county or counties affected by the abandonment.

(5) The commission shall publish the notice of proposed abandonment and public hearing for 3 successive weeks in local newspapers within the county.

(6) The commission, in its sole discretion, may enter an order abandoning the subject property.

(7) The order with exhibits attached must be recorded by the department in the office of the clerk and recorder in the county or counties in which the subject property is located.

NEW SECTION. Section 5. Criteria for abandonment. (1) Subject to subsection (2), the commission shall enter an order abandoning the subject property upon finding that:

(a) the department has determined that the cost of disposing of the subject property by sale pursuant to 60-4-202 or exchange pursuant to 60-4-201 exceeds the fair market value of the subject property;

(b) a remainder exists to provide reasonable access; and

(c) at least one of the following applies:

(i) the disposal qualifies as an exception to 23 CFR 710.403(d);

1 (ii) reimbursement of federal funds is not required; or

2 (iii) the commission agrees to any required reimbursement of federal funds.

3 (2) An owner of contiguous property who does not object to the proposed receipt of title to the
4 abandoned interest is considered to have consented to the receipt of title.

5
6 **NEW SECTION. Section 6. Title.** (1) The department is not responsible for apportioning the
7 abandoned interest among the owners of the contiguous property, and the provisions of 60-4-209(3) do not apply
8 to this abandonment.

9 (2) By consummating the abandonment, neither the department nor the commission gives the
10 covenants set forth in 30-11-110 or warrants title.

11 (3) The interest acquired by each owner of contiguous property is the abandoned interest in the subject
12 property between the extension of the boundaries of the contiguous property, extending on the same course and
13 intersecting with the linear boundary of the remainder.

14
15 **Section 7.** Section 60-2-107, MCA, is amended to read:

16 **"60-2-107. Abandonment of highways -- exchange of roadways -- public notice required.** (1) ~~The~~
17 Except as provided in [sections 1 through 6], the commission may abandon highways on the federal-aid systems
18 and state highways.

19 (2) ~~Before~~ Except as provided in [sections 1 through 6], before abandoning or discontinuing
20 maintenance on a highway, the commission shall hold a public hearing in the county or counties affected by the
21 abandonment. The commission may elect to offer to transfer the liability for and the maintenance of a highway
22 to another agency or agencies that may in turn elect to take responsibility for the highway. The commission shall
23 notify the board of county commissioners in writing of its intent to abandon a highway and hold a public hearing.
24 The commission shall publish for 3 consecutive weeks in local newspapers within the county the notice of
25 abandonment and public hearing.

26 (3) ~~The~~ Except as provided in [sections 1 through 6], the commission may enter into an agreement with
27 a unit of local government, on mutually beneficial terms, to exchange property interests or responsibilities,
28 including maintenance, on any portion of a federal-aid or state highway and on any portion of a county road or
29 city street.

30 (4) The commission may not abandon a highway, road, or right-of-way used to access public land

1 unless another highway, road, or right-of-way provides substantially the same access.

2 (5) The commission may not abandon a highway, road, or right-of-way used to access private land if
3 the access benefits two or more landowners unless all the landowners agree to the abandonment."
4

5 **Section 8.** Section 60-4-201, MCA, is amended to read:

6 **"60-4-201. Exchange of interest in real property.** (1) The department may determine that an interest
7 in real property, however acquired by it, is no longer necessary to the laying out, altering, construction,
8 improvement, or maintenance of a highway. ~~The~~ Except as provided in [sections 1 through 6], the department
9 may then exchange the interest, either as entire or partial consideration, for any other interest in real property
10 needed for highway purposes. The department may establish the manner and terms and conditions for the
11 exchange.

12 (2) ~~Prior~~ Except as provided in [sections 1 through 6], prior to making the exchange, the department
13 shall notify all landowners whose property is adjacent to the land proposed for exchange. If any of the
14 landowners are interested in buying the land proposed for exchange, the landowners shall notify the department
15 of their interest by registered letter within 30 days of the receipt of the notice of exchange from the department.
16 Upon receipt of a notice of interest, the department shall offer the land proposed for exchange for sale as
17 provided in 60-4-202 and 60-4-203."
18

19 **Section 9.** Section 60-4-202, MCA, is amended to read:

20 **"60-4-202. Sale of interest in real property.** (1) The department may sell an interest in real property
21 if the department determines that the property is not necessary to the laying out, altering, construction,
22 improvement, or maintenance of a highway. Except as provided in [sections 1 through 6] and subsection (2) of
23 this section, if the interest is reasonably of a value in excess of \$10,000, sale must be made to the highest bidder
24 at public auction. The sale of an interest at auction must be conducted as provided in 77-2-321.

25 (2) (a) The department may sell an interest in real property without a public auction directly to:

26 (i) a federal, state, tribal, or local government;

27 (ii) an agency of government;

28 (iii) a school district; or

29 (iv) a unit of the Montana university system.

30 (b) The department shall obtain fair market value for the property.

(3) ~~Before~~ Except as provided in [sections 1 through 6], before the department sells an interest in real property as provided in subsection (2), the department shall notify all landowners whose property is adjacent to the land proposed for sale. If any of the landowners are interested in buying the land proposed for sale, the landowners shall notify the department of their interest by registered letter within 30 days of the receipt of the notice of sale from the department. Upon receipt of a notice of interest, the department shall offer the land for sale as provided in 60-4-203 and this section."

Section 10. Section 60-4-203, MCA, is amended to read:

"60-4-203. Conduct of sale. (1) ~~The~~ Except as provided in [sections 1 through 6], the department shall publish notice of the sale once a week for 4 successive weeks in a newspaper published in the county in which the interest is located. The notice of sale must contain the information required by 77-2-322. Sale must be held in the county where the property is located.

(2) ~~Before~~ Except as provided in [sections 1 through 6], before the sale of an interest having a value in excess of \$10,000, the department must have the interest appraised at a price representing a fair market value. The appraised value must be stated in the published notice.

(3) ~~A~~ Except as provided in [sections 1 through 6], a sale of an interest may not be made unless it has been appraised within 3 months prior to the date of the sale. A sale may not be made for less than 90% of the appraised value.

(4) ~~Title~~ Except as provided in [sections 1 through 6], title to an interest may not pass from the state until the purchaser has paid the full amount of the purchase price into the state treasury to the credit of the department."

Section 11. Section 60-4-209, MCA, is amended to read:

"60-4-209. Abandoned highway property -- title vests in contiguous owner. (1) ~~Upon~~ Except as provided in [sections 1 through 6], upon abandonment by the state in the manner provided in subsection (2) of an interest in real property acquired for the purpose of establishment of a highway, the owner of contiguous real property or ~~his~~ the owner's successor in interest is vested with the abandoned interest to the extent provided in subsection (3).

(2) For the purposes of this section:

(a) a fee simple interest may be abandoned only by the proper order of the commission; and

(b) an interest of less than fee simple may be abandoned in the manner provided in subsection (2)(a), by operation of law, and by judgment of a court of competent jurisdiction.

(3) ~~The~~ Except as provided in [sections 1 through 6], the interest acquired by the contiguous property owner under subsection (1) is the abandoned interest or portion of ~~such~~ the interest:

(a) if there are different contiguous property owners on each side of the abandoned interest, bounded on one side by the contiguous property and on the remaining two opposite sides by lines following the shortest distance from the extreme ends of the contiguous property abutting upon the abandoned interest to the center of the abandoned interest; and

(b) if the owners of the contiguous property on each side of the abandoned interest are ~~one~~ and the same, bounded on two opposite sides by the contiguous properties and on the two remaining opposite sides by lines following the shortest distance from the extreme ends of the contiguous property on one side of the abandoned interest to the extreme ends of the contiguous property on the other side of the abandoned interest.

(4) For the purpose of this section, an interest in property abandoned by a proper order of the commission includes an interest in property that the commission determines to be unnecessary to the laying out, altering, construction, improvement, or maintenance of a highway, whether or not the commission determines to sell ~~such~~ the interest.

(5) ~~The~~ Except as provided in [sections 1 through 6], the interest acquired by a contiguous property owner under subsection (3) is conditioned upon the use of the property for agricultural or noncommercial purposes. If the property is used for commercial purposes or for purposes of future subdivision or other similar development, the property ~~shall~~ must revert to the state for sale pursuant to this part. This restriction applies to all subsequent holders of title to the property."

NEW SECTION. **Section 12. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 60, chapter 4, part 2, and the provisions of Title 60, chapter 4, part 2, apply to [sections 1 through 6].

NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

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